

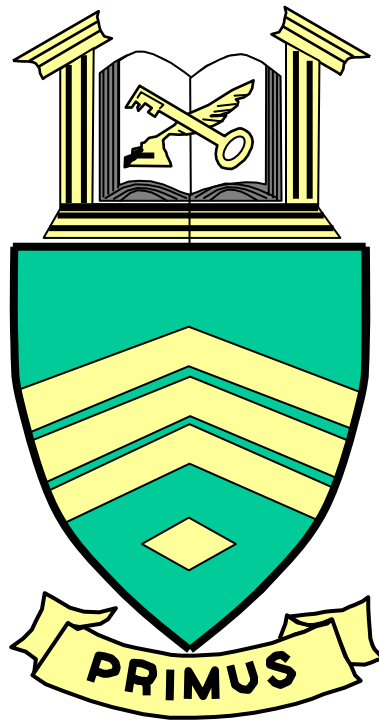
U.S. ARMY SERGEANTS MAJOR ACADEMY (FSC-TATS)

L673 (052002)

JUN 01

SOLDIER'S RIGHTS

PRERESIDENT TRAINING SUPPORT PACKAGE



Overview

The intent of this lesson is not to make you a lawyer, but rather, to clarify what you can and cannot do when your duties involve the search or questioning of a soldier suspected or accused of wrongdoing. Unfortunately, each new court decision regarding a persons rights is apt to cause a new interpretation of the law relating to the rights of accused or suspected persons. This means that you must continuously consult with the Staff Judge Advocate (SJA) on the fine points of the law. It is the judge advocate's duty to see that commanders carry out criminal justice in the command properly and fairly.

Inventory of Lesson Materials

Prior to starting this lesson ensure you received all materials (pages, tapes, disks, etc.) required for this Training Support Package. Go to the “**This [TSP or Appendix] Contains**” section on page two of the TSP and the first page of each Appendix, and verify you have all the pages. If you are missing any material, contact the First Sergeant Course Class Coordinator at the training institution where you will attend phase II FSC-TATS.

Point of Contact

If you have any questions regarding this lesson, contact the First Sergeant Course Class Coordinator at the training institution where you will attend phase II FSC-TATS.

PRERESIDENT TRAINING SUPPORT PACKAGE

**TSP Number/
Title** L673
Soldier's Rights

Effective date JUN 01

**Supersedes
TSPs** OCT 99

TSP User This TSP contains a training requirement that you must complete prior to attending phase II, FSC-TATS. It will take you about one hour to complete this requirement.

Proponent The proponent for this document is the U.S. Army Sergeants Major Academy. POC: FSC TATS Course Chief, DSN: 978-8854/8848; commercial: (915) 568-8854/8848.

**Comments/
Recommendations** Send comments and recommendations on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to:

COMDT USASMA
ATTN ATSS DCF FSC TATS
BLDG 11291 BIGGS FLD
FT BLISS TX 79918-8002

**Foreign
Disclosure
Restrictions** The lesson developer in coordination with the USASMA foreign disclosure authority has reviewed this lesson. This lesson is releasable to foreign military students from all requesting foreign countries without restrictions.

**This TSP
Contains**

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SECTION I ADMINISTRATIVE DATA

Task Trained This lesson trains the task listed in the following tables:

Task number:	181-315-1001
Task title:	Soldier's Rights,
Conditions:	as a First Sergeant, given extracts from Manual for Courts-Martial,
Standard:	IAW Manual for Courts-Martial, part III, Rule 305, III-6(2)(b); Appendix 2, Article 31; AR 190-30, Appendix C; FM 27-14, Chap 3, page 15 and 16,
TASK Proponent:	U.S. Army Sergeants Major Academy.

**Task(s)
Reinforced** None

**Prerequisite
Lesson(s)** L672 Manual for Courts-Martial

**Clearance and
Access** There are no clearance or access requirements for this lesson.

Copyright Statement

No copyrighted material reproduced for use in this lesson.

References

The following table lists the references for this lesson:

Number	Title	Date	Additional Information
MCM	Manual for Courts-Martial, Rule 305, III-6(2)(b); Appendix 2, Article 31;	2000	None
AR 190-30	Military Police Investigation, Appendix C	1 Jun 78	None
FM 27-14	Legal Guide for Soldiers, Chap 3, pages 15 and 16	16 Apr 91	None

Equipment Required

None

Materials Required

This preresident training package contains all material necessary to complete this lesson.

Safety Requirements

None

Risk Assessment Level

Low

Environmental Considerations

None

Lesson Approval The following individuals have reviewed and approved this lesson for publication and incorporation into the First Sergeant Course--Total Army Training System.

Name/Signature	Rank	Title	Date
Kevin L. Graham	MSG	Training Developer	
Chris L. Adams	SGM	Chief Instructor, FSC	
John W. Mayo	SGM	Course Chief, FSC-TATS	

SECTION II INTRODUCTION

Terminal Learning Objective At the completion of this lesson, you will--

Action:	Identify how to protect the rights of a suspected or accused soldier,
Conditions:	as a first sergeant in a classroom environment, given extracts from the Manual for Courts-Martial (SH-1), AR 190-30 (SH-2), FM 27-14 (SH-3),
Standard:	Identified how to protect the rights of a suspected or accused soldier IAW SH-1, SH-2 and SH-3.

Evaluation When you enter Phase II FSC-TATS, you will receive the end of Phase I Performance Examination that will include questions based on material in this lesson. On that examination, you must answer at least 35 of the 50 questions correctly to achieve a GO.

Instructional Lead-in This lesson discusses the procedures for informing the accused, or a suspect, of their rights. It also encompasses the procedure for questioning and the requirements that constitute a legal search. From this lesson, you should gain confidence in your ability to properly advise and explain a soldier's rights and to recognize the requirements of a legal search.

SECTION III PRESENTATION

ELO 1

Action:	Identify how to protect the rights of a suspected or accused soldier,
Conditions:	as a first sergeant in a classroom environment, given SH-1 and SH-2,
Standard:	Identified how to protect the rights of a suspected or accused soldier IAW SH-1 and SH-2.

**Learning
Step/
Activity
(LS/A) 1,
ELO 1**

To complete the learning activity, you must--

- Read the above ELO.
 - Read extracts from Student Handout 1, pages SH-1-2 to SH-1-9 and Student Handout 3, pages SH-3-2 to SH-3-4.
 - Complete items 1, 2, 3, and 4 of LE-1, Appendix B.
 - Compare your responses with the suggested solution found in the solution, SLE-1-1 at Appendix B.
 - If your response does not agree with the answer in the solution discussion, review the lesson material.
-

ELO 2

Action:	Identify the preliminary procedures required for interrogation,
Conditions:	as a first sergeant in a classroom environment, given SH-1,
Standard:	Identified the preliminary procedures required for interrogation IAW SH-1.

LS/A 1, ELO 2

To complete the learning activity, you must--

- Read the above ELO.
 - Review extracts from Student Handout 1, pages SH-1-2 thru SH-1-9.
 - Complete item 5, LE-1, Appendix B.
 - Compare your responses with the suggested solution found in the solution, SLE-1 at Appendix B.
 - If your response does not agree with the answer in the solution discussion, review the lesson material.
-

ELO 3

Action:	Identify procedures for a search based upon probable cause,
Conditions:	as a first sergeant in a classroom environment, given SH-1,
Standard:	Identified procedures for a search based upon probable cause IAW SH-1.

LS/A 1, ELO 3

The complete the learning activity, you must--

- Read the above ELO.
- Review extracts from Student Handout1, pages SH-1-2 thru SH-1-9.
- Complete items 6, 7, and 8 of LE-1, Appendix B.
- Compare your responses with the suggested solution found in the solution, SLE-1 at Appendix B.
- If your response does not agree with the answer in the solution discussion, review the lesson material.

SECTION IV SUMMARY

Our constitution protects every citizen from unreasonable searches. What constitutes unreasonable however, is not absolute. Our courts have balanced the rights of the individual against the needs of society and have established rules for determining when a search is reasonable. Being in the army does not alter these rules. A soldier continues to enjoy these rights under the Manual for Courts-Martial (MCM) and the Uniform Code of Military Justice (UCMJ). As a first sergeant, you play an important part in ensuring preservation of these rights. Your duty is two-fold; protect the rights of the soldier and protect the rights of the government. Protecting the rights of the soldier will also protect the case for the government.

Check on Learning

The lesson exercise you completed in Appendix B serves as the check on learning for this lesson.

Transition to Next Lesson

None

SECTION V STUDENT EVALUATION

Testing Requirements When you enter Phase II FSC-TATS, you will receive the end of Phase I Performance Examination that will include questions based on material in this lesson. On that examination, you must answer at least 35 of the 50 questions correctly to achieve a GO.

SECTION VI QUESTIONNAIRE

Directions Complete the following actions:

- Enter your name, your rank, and the date you complete this questionnaire.

Name:	Rank:	Date:
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- Answer items 1 through 6 below.
- Fold the questionnaire, so the address for USASMA is visible.
- Print your return address, add postage, and mail.

Note: Your response to this questionnaire will assist the us in refining and improving this course. When completing the questionnaire, answer each question frankly. Your assistance helps build and maintain the best curriculum possible.

Item 1	Do you feel you have mastered the learning objectives of this lesson?
Item 2	Was the material covered in this lesson new to you?
Item 3	Which parts of this lesson were most helpful to you in learning the objectives?
Item 4	How could we improve the format of this lesson?
Item 5	How could we improve the content of this lesson?
Item 6	Do you have additional questions or comments? If you do please list them here. You may add and attach additional pages, if necessary.

CMDT USASMA
ATTN ATSS DCF FSC TATS
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Appendix B

Index of Lesson Exercises and Solutions

**This Appendix
Contains**

This Appendix contains the items listed in this table--

Title/Synopsis	Page(s)
LE 1, Soldier's Rights	LE-1-1
SLE-1, Soldier's Rights	SLE-1-1 thru SLE-1-2

LESSON EXERCISE 1
(Self-Graded)
SOLDIER'S RIGHTS

Overview: Before completing this lesson exercise, study Student Handout 1. This lesson exercise begins with a review identifying the items located in that student handout.

ELO 1: Describe the procedures for informing the suspect or accused of his or her rights.

QUESTION 1: What article of the UCMJ provides basic rights under military criminal law?

QUESTION 2: When do you have to inform a soldier of his or her basic rights?

QUESTION 3: What constitutes interrogation?

QUESTION 4: What are some of the basic rights a suspect or accused has under article 31 of the UCMJ?

ELO 2: Identify the preliminary procedures required for interrogation.

QUESTION 5: The MCM Rule 305, states that you “may not interrogate or request any statement from an accused or a person suspected of an offense without first doing what three things?

ELO 3: Determine the procedure for a search based upon probable cause.

QUESTION 6: What are the two major ways to conduct a legal search?

QUESTION 7: What is the definition of probable cause?

QUESTION 8: According to the MCM, what are the grounds on which a commander can base probable cause?

SOLUTION TO LESSON EXERCISE 1
(Self-Graded)
SOLDIER'S RIGHTS

ELO 1: Describe the procedures for informing the suspect or accused of his or her rights.

QUESTION 1: What article of the UCMJ provides basic rights under military criminal law?

ANSWER: Article 31.

REFERENCE: SH-1-9, MCM, Appendix 2, page A2-9. (Section 831)

QUESTION 2: When do you have to inform a soldier of his or her basic rights?

ANSWER: Prior to interrogation/questioning.

REFERENCE: SH-1-3, MCM, Part III, Rule 305(c), page III-7.

QUESTION 3: What constitutes interrogation?

ANSWER: Includes any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

REFERENCE: SH-1-3 thru SH-1-4, MCM, Part III, Rule 305(b)(2), page III-6.

QUESTION 4: What are some of the basic rights a suspect or accused has under article 31 of the UCMJ?

ANSWER: (1) The right to a defense lawyer.
(2) The right to due process of the law.
(3) The right to remain silent.
(4) The right under the law of search and seizure.

REFERENCE: SH-3-2, FM 27-14, Chapter 3, pages 15 and 16.

ELO 2: Identify the preliminary procedures required for interrogation.

QUESTION 5: The MCM Rule 305, states that you "may not interrogate or request any statement from an accused or a person suspected of an offense without first doing what three things?

ANSWER: (1) Informing the accused or suspect of the nature of the accusation.
(2) Advising the accused or suspect that the accused or suspect has the right to remain silent.
(3) Advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

REFERENCE: SH-1-3, MCM, Rule 305(c)(1)(2) & (3), page III-7.

ELO 3: Determine the procedure for a search based upon probable cause.

QUESTION 6: What are the two major ways to conduct a legal search?

ANSWER: (1) Probable cause searches.
(2) Searches not requiring probable cause.

REFERENCE: SH-1-5 and SH -1-7, MCM, Part III, Rule 314, page III-12, and Rule 315, page III-14.

QUESTION 7: What is the definition of probable cause?

ANSWER: Manual for Courts-Martial states that probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched.

REFERENCE: SH-1-8, MCM, Rule 315, paragraph (f)(2), part III-15.

QUESTION 8: According to the MCM, what are the grounds on which a commander can base probable cause?

ANSWER: (1) Written statements communicated to the authorizing officer.
(2) Oral statements communicated to the authorizing officer in person, via telephone, or by other appropriate means of communication.
(3) Information known by the authorizing officer that would not preclude the officer from acting in an impartial fashion.

REFERENCE: SH-1-8, MCM, Part III, Rule 315, paragraph (f)(2)(A)(B) & (C), page III-15.

Appendix C

Index of Student Handouts

This Appendix Contains This appendix contains the items listed in this table--

Title /Synopsis	Page(s)
SH-1, extracts from the Manual for Courts-Martial (MCM)	Pages SH-1-1 thru SH-1-9
SH-2, extracts from AR 190-30	Pages SH-2-1 thru SH-2-5
SH-3, extracts from FM 27-14, The Legal Guide for Soldiers	Pages SH-3-1 thru SH-3-4

Student Handout 1

Extract

Pages SH-1-2 through SH-1-9, are extracts from the Manual for Courts-Martial (2000 Edition), Part III, Military Rules of Evidence (M.R.E.), selected portions of Rules 305, 314 and 315, downloaded from the U.S. Army Publishing Agency (USAPA).

statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

(f) *Defense evidence.* The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily. Prior to the introduction of such testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(g) *Corroboration.* An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth. Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, then the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence. Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(1) *Quantum of evidence needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and

type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(2) *Procedure.* The military judge alone shall determine when adequate evidence of corroboration has been received. Corroborating evidence usually is to be introduced before the admission or confession is introduced but the military judge may admit evidence subject to later corroboration.

(h) *Miscellaneous.*

(1) *Oral statements.* A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(2) *Completeness.* If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(3) *Certain admissions by silence.* A person's failure to deny an accusation of wrongdoing concerning an offense for which at the time of the alleged failure the person was under official investigation or was in confinement, arrest, or custody does not support an inference of an admission of the truth of the accusation.

(4) *Refusal to obey order to submit body substance.* If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

(A) A charge of violating an order to submit such a sample; or

(B) Any other charge on which the results of the chemical analysis would have been admissible.

Rule 305. Warnings about rights

(a) *General rule.* A statement obtained in violation of this rule is involuntary and shall be treated under Mil. R. Evid. 304.

(b) *Definitions.* As used in this rule:

(1) *Person subject to the code.* A "person subject to the code" includes a person acting as a knowing agent of a military unit or of a person subject to the code.

(2) *Interrogation.* "Interrogation" includes any

formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

(c) *Warnings concerning the accusation, right to remain silent, and use of statements.* A person subject to the code who is required to give warnings under Article 31 may not interrogate or request any statement from an accused or a person suspected of an offense without first:

- (1) informing the accused or suspect of the nature of the accusation;
- (2) advising the accused or suspect that the accused or suspect has the right to remain silent; and
- (3) advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

(d) *Counsel rights and warnings.*

(1) *General rule.* When evidence of a testimonial or communicative nature within the meaning of the Fifth Amendment to the Constitution of the United States either is sought or is a reasonable consequence of an interrogation, an accused or a person suspected of an offense is entitled to consult with counsel as provided by paragraph (2) of this subdivision, to have such counsel present at the interrogation, and to be warned of these rights prior to the interrogation if—

(A) The interrogation is conducted by a person subject to the code who is required to give warnings under Article 31 and the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way; or

(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity, or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of the charges.

(2) *Counsel.* When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) shall be provided by the United States at no expense to the person and without regard to the person's indigency or lack thereof before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless

otherwise provided by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.

(e) *Presence of Counsel.*

(1) *Custodial interrogation.* Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) *Post-preferral interrogation.* Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.

(f) *Exercise of rights.*

(1) *The privilege against self-incrimination.* If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) *The right to counsel.* If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.

(g) *Waiver.*

(1) *General rule.* After receiving applicable warnings under this rule, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel and affirmatively consent to making a statement.

(2) *Counsel.*

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(A) requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that—

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

(h) *Nonmilitary interrogations.*

(1) *General rule.* When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, and such official or agent is not required to give warning under subdivision (c), the person's entitlement to rights warnings and the validity of any waiver of applicable rights shall be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.

(2) *Foreign interrogations.* Neither warnings under subdivisions (c) or (d), nor notice to counsel under subdivision (e) are required during an interrogation conducted abroad by officials of a foreign government or their agents unless such interrogation is conducted, instigated, or participated in by military personnel or their agents or by those officials or agents listed in subdivision (h)(1). A statement obtained during such an interrogation is involuntary within the meaning of Mil. R. Evid. 304(b)(3) if it is obtained through the use of coercion, unlawful influence, or unlawful inducement. An interrogation is not "participated in" by military personnel or their

agents or by the officials or agents listed in subdivision (h)(1) merely because such a person was present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation.

Rule 306. Statements by one of several accused

When two or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculcating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination.

Rule 311. Evidence obtained from unlawful searches and seizures

(a) *General rule.* Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) *Objection.* The accused makes a timely motion to suppress or an objection to the evidence under this rule; and

(2) *Adequate interest.* The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.

(b) *Exceptions.*

(1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

(2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

(3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) The search or seizure resulted from an authorization to search, seize or apprehend issued by

Rule 313. Inspections and inventories in the armed forces

(a) *General rule.* Evidence obtained from inspections and inventories in the armed forces conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Inspections.* An “inspection” is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. An inspection may include but is not limited to an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband. An order to produce body fluids, such as urine, is permissible in accordance with this rule. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule. If a purpose of an examination is to locate weapons or contraband, and if: (1) the examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled; (2) specific individuals are selected for examination; or (3) persons examined are subjected to substantially different intrusions during the same examination, the prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule. Inspections shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected. Unlawful weapons, contraband, or other evidence of crime located during an inspection may be seized.

(c) *Inventories.* Unlawful weapons, contraband, or other evidence of crime discovered in the process of an inventory, the primary purpose of which is administrative in nature, may be seized. Inventories shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. An examination made for the primary

purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

Rule 314. Searches not requiring probable cause

(a) *General rule.* Evidence obtained from reasonable searches not requiring probable cause conducted pursuant to this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Border searches.* Border searches for customs or immigration purposes may be conducted when authorized by Act of Congress.

(c) *Searches upon entry to or exit from United States installations, aircraft, and vessels abroad.* In addition to the authority to conduct inspections under Mil. R. Evid. 313(b), a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or international waters, may authorize appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. Such searches may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party. Failure to comply with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by this subdivision.

(d) *Searches of government property.* Government property may be searched under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal

circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal posses-

sions normally are issued for personal use; but the determination as to whether a person has a reasona-

ble expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

(e) *Consent searches.*

(1) *General rule.* Searches may be conducted of any person or property with lawful consent.

(2) *Who may consent.* A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(3) *Scope of consent.* Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(4) *Voluntariness.* To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) *Burden of proof.* Consent must be shown by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the burden of proof.

(f) *Searches incident to a lawful stop.*

(1) *Stops.* A person authorized to apprehend under R.C.M. 302(b) and others performing law enforcement duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

(2) *Frisks.* When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence located in the process of a lawful frisk may be seized.

(3) *Motor vehicles.* When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle

may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

(g) *Searches incident to a lawful apprehension.*

(1) *General rule.* A person who has been lawfully apprehended may be searched.

(2) *Search for weapons and destructible evidence.* A search may be conducted for weapons or destructible evidence, in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property; provided, that the passenger compartment of an automobile, and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.

(3) *Examination for other persons.*

(A) When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(h) *Searches within jails, confinement facilities, or similar facilities.* Searches within jails, confinement facilities, or similar facilities may be authorized by persons with authority over the institution.

(i) *Emergency searches to save life or for related purposes.* In emergency circumstances to save life or for a related purpose, a search may be conducted of

persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) *Searches of open fields or woodlands.* A search of open fields or woodlands is not an unlawful search within the meaning of Mil. R. Evid. 311.

(k) *Other searches.* A search of a type not otherwise included in this rule and not requiring probable cause under Mil. R. Evid. 315 may be conducted when permissible under the Constitution of the United States as applied to members of the armed forces.

Rule 315. Probable cause searches

(a) *General rule.* Evidence obtained from searches requiring probable cause conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Definitions.* As used in these rules:

(1) *Authorization to search.* An “authorization to search” is an express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) *Search warrant.* A “search warrant” is an express permission to search and seize issued by competent civilian authority.

(c) *Scope of authorization.* A search authorization may be issued under this rule for a search of:

(1) *Persons.* The person of anyone subject to military law or the law of war wherever found;

(2) *Military property.* Military property of the United States or of nonappropriated fund activities of an armed force of the United States wherever located;

(3) *Persons and property within military control.* Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) *Nonmilitary property within a foreign country.*

(A) Property owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense when situated in a foreign country. A search of such property may not be conducted without the

concurrence of an appropriate representative of the agency concerned. Failure to obtain such concurrence, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(B) Other property situated in a foreign country. If the United States is a party to a treaty or agreement that governs a search in a foreign country, the search shall be conducted in accordance with the treaty or agreement. If there is no treaty or agreement, concurrence should be obtained from an appropriate representative of the foreign country with respect to a search under paragraph (4)(B) of this subdivision. Failure to obtain such concurrence or noncompliance with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(d) *Power to authorize.* Authorization to search pursuant to this rule may be granted by an impartial individual in the following categories:

(1) *Commander.* A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) *Military judge.* A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned. An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(e) *Power to search.* Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any

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such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(f) Basis for Search authorizations.

(1) *Probable cause requirement.* A search authorization issued under this rule must be based upon probable cause.

(2) *Probable cause determination.* Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be search. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

(A) Written statements communicated to the authorizing officer;

(B) Oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements.

(g) *Exigencies.* A search warrant or search authorization is not required under this rule for a search based on probable cause when:

(1) *Insufficient time.* There is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(2) *Lack of communications.* There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization and there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(3) *Search of operable vehicle.* An operable vehicle is to be searched, except in the circumstances where a search warrant or authorization is required by the Constitution of the United States, this Manual, or these rules; or

(4) *Not required by the Constitution.* A search

warrant or authorization is not otherwise required by the Constitution of the United States as applied to members of the armed forces. For purpose of this rule, a vehicle is “operable” unless a reasonable person would have known at the time of search that the vehicle was not functional for purposes of transportation.

(h) Execution.

(1) *Notice.* If the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should when possible notify him or her of the act of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Failure to provide such notice does not make a search unlawful within the meaning of Mil. R. Evid. 311.

(2) *Inventory.* Under regulations prescribed by the Secretary concerned, and with such exceptions as may be authorized by the Secretary, an inventory of the property seized shall be made at the time of a seizure under this rule or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken. Failure to make an inventory, furnish a copy thereof, or otherwise comply with this paragraph does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.

(3) *Foreign searches.* Execution of a search authorization outside the United States and within the jurisdiction of a foreign nation should be in conformity with existing agreements between the United States and the foreign nation. Noncompliance with such an agreement does not make an otherwise lawful search unlawful.

(4) *Search warrants.* Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable Act of Congress.

Rule 316. Seizures

(a) *General rule.* Evidence obtained from seizures

reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 8 16(l)(B) or (2)(C) of this title (article 16(l)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

Sec.	Art
830.	30. Charges and specifications.
831.	31. Compulsory self-incrimination prohibited.
832.	32. Investigation.
833.	33. Forwarding of charges.
834.	34. Advice of staff judge advocate and reference for trial.
835.	35. Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the

armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and pre

Student Handout 2

Extract

Pages SH-2-2 through SH-2-5, are extracts of AR 190-30, Appendix C, downloaded from the U.S. Army Publishing Agency (USAPA).

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Appendix C.**WARNING OF RIGHTS**

C-1. **Warning.** Prior to any questioning, a suspect or accused person must be given a proper warning of his rights. The individual must first be informed of this official position of the person questioning him, the general nature of the offense(s), and the fact that he is a suspect. Then he must be given this warning: "BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS."

a. "YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING."

b. "ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL."

c. (For personnel subject to the UCMJ) "YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN LAWYER YOU ARRANGE FOR, AND IF NECESSARY, YOU PAY FOR, OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU. ALSO, YOU MAY ASK FOR A MILITARY OF YOUR CHOICE BY NAME, AND HE WILL BE DETAILED FOR YOU IF HIS SUPERIORS DETERMINE THAT HE IS REASONABLY AVAILABLE."

d. (For civilians not subject to the UCMJ) "YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, ARRANGE-

MENTS WILL BE MADE TO OBTAIN A LAWYER FOR YOU."

e. "IF YOU ARE WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION, WITH OR WITHOUT A LAWYER, STOP ANSWERING QUESTIONS AT ANY TIME OR SPEAK TO A LAWYER BEFORE ANSWERING FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE."

C-2. Waiver. After the warning is given, it must be determined whether the accused or suspect understands his rights and is able freely, knowingly and intelligently to waive them. If he does so understand his rights, he must then specifically be asked these two questions:

a. "DO YOU WANT A LAWYER AT THIS TIME! "(If the suspect/accused says "Yes," stop the questioning until he has a lawyer. If the suspect/accused says "No," ask him the following question).

b. "AT THIS TIME, ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION?" (If the suspect/accused says "No," stop the interview and have him read and sign the non-waiver section, of the waiver certificate on DA Form 3881 (Rights Warning Procedure/Waiver Certificate). If the suspect says "Yes," have him read and sign the waiver section of the waiver certificate on DA Form 3881.)

C-3. Special instructions.

a. If the accused or suspect indicates that he wishes to consult a lawyer, he must not be

questioned until a lawyer is obtained. Likewise, if the accused or suspect indicated he does not wish to be questioned, and does not desire to have a lawyer present, he will not be interviewed. If the accused or suspect, whether he is military or civilian, states he wishes the services of a lawyer, he will be provided the location and telephone number of the nearest staff judge advocate. After the accused or suspect has consulted his lawyer, MPI will arrange for further interview through the accused's or suspect's lawyer.

b. If the suspect/accused orally waives his rights but refuses to sign the waiver, he may be questioned. Notations will be made on the waiver certificate to the effect that the accused or suspect has stated that he understands his rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

c. In all cases, the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion temporarily may be postponed. Notes should be kept on the circumstances.

C-4. Prior incriminating statements.

a. If the suspect/accused made spontaneous incriminating statements before being properly advised of his rights, he should be told that such statements do not obligate him to answer further questioned as such statements do not obligate him to answer further questions.

b. If the suspect/accused was questioned as such previously without being advised properly of his rights, he should be told that statements made at that time cannot be used against him and do not obligate him to answer further questions.

c. If a or b above apply, the fact that the suspect/accused was advised accordingly should be noted on the waiver certificate and initialed by the suspect/accused.

C-5. Verbatim reading of Article 31.

It is not advisable to read Article 31, UCMJ (or the Fifth Amendment to the Constitution) verbatim to a suspect/accused before questioning. The warning contained in paragraph C-1 is a simple restatement of the rights of which an accused or suspect may be apprised before being asked to waive his rights

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY: Title 10, United States Code, Section 3012(g)			
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.			
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.			
DISCLOSURE: Disclosure of your Social Security Number is voluntary.			
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)		8. ORGANIZATION OR ADDRESS	
6. SSN	7. GRADE/STATUS		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
Section A. Rights			
The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. I do not have to answer any question or say anything.			
2. Anything I say or do can be used as evidence against me in a criminal trial.			
3. (For personnel subject othe UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.			
- or -			
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.			
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.			
5. COMMENTS (Continue on reverse side)			
Section B. Waiver			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print)			
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR	
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR	
Section C. Non-waiver			
1. I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

PART II - RIGHTS WARNING PROCEDURE	
THE WARNING	
<p>1. WARNING - Inform the suspect/accused of:</p> <ol style="list-style-type: none"> Your official position. Nature of offense(s). The fact that he/she is a suspect/accused. <p>2. RIGHTS - Advise the suspect/accused of his/her rights as follows:</p> <p>"Before I ask you any questions, you must understand your rights."</p> <ol style="list-style-type: none"> "You do not have to answer my questions or say anything." "Anything you say or do can be used as evidence against you in a criminal trial." (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer 	<p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."</p> <p style="text-align: center;">- or -</p> <p><i>(For civilians not subject to the UCMJ)</i> You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."</p> <ol style="list-style-type: none"> "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate." <p>Make certain the suspect/accused fully understands his/her rights.</p>
THE WAIVER	
<p>"Do you understand your rights?"</p> <p>(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)</p> <p>"Have you ever requested a lawyer after being read your rights?"</p> <p>(If the suspect/accused says "yes," find out when and where. If the request was recent (<i>i.e., fewer than 30 days ago</i>), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)</p>	<p>"Do you want a lawyer at this time?"</p> <p>(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)</p> <p>"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" <i>(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)</i></p>
SPECIAL INSTRUCTIONS	
<p>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.</p> <p>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.</p> <p>PRIOR INCRIMINATING STATEMENTS:</p> <ol style="list-style-type: none"> If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions. 	<ol style="list-style-type: none"> If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal. <p>NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.</p> <p>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")</p>
COMMENTS <i>(Continued)</i>	

Student Handout 3

Extract

Pages SH-3-2 through SH-3-4, are extracts FM 27-14, pages 15 and 16, downloaded from the U.S. Army Publishing Agency (USAPA).

MILITARY ROLES

The following paragraphs address the roles of the commander, the staff judge advocate, military judges, and court members in the military justice system.

THE COMMANDER

The unit (company, battery, troop, detachment, and so forth) commander is usually the first to learn of misconduct that might give rise to administrative action, nonjudicial punishment, or court-martial charges. He must promptly investigate the circumstances of an alleged crime and decide what to do about it. In deciding what to do, the commander must consider the seriousness of the offense, your past record and your potential for further useful service, and the state of morale and discipline in the unit. He must decide whether to refer the matter up the chain of command or dispose of it within the unit by administrative action or by UCMJ, Article 15 (nonjudicial punishment). If he forwards a case to a superior, that officer will apply the same criteria in deciding whether to take appropriate action or to forward the case still higher. Each commander is responsible for both enforcing the law and protecting your rights.

THE STAFF JUDGE ADVOCATE

The staff judge advocate (SJA) of the unit's division or post has a duty to see that criminal justice in the command is carried out properly and fairly. The SJA advises commanders at every level about their handling of cases. Judge advocates, all fully qualified lawyers, advise and represent soldiers accused of crimes. Although available through the office of the staff judge advocate, they are assigned to a separate organization, the United States Army Trial Defense Service (USATDS or TDS).

MILITARY JUDGES

Military judges are assigned to sit on all general and most special courts-martial. These individuals are experienced lawyers with training as military judges. They decide questions of law, instruct the court members on law that applies to the case, and ensure that the trial is conducted legally.

COURT MEMBERS

The commander selects active-duty soldiers to act as court members. An enlisted accused may request that enlisted soldiers hear his or her case. In such an instance, at least one-third of the members of the court will be enlisted. They may not, however, be from the same unit as the accused. All members of the court have an equal voice and vote. The accused has the right to challenge any member on the court, including the judge, if the member or judge is not impartial. The accused may also challenge one member of the court without any reason. Any member successfully challenged takes no further part in the trial.

RIGHTS AND PROCEDURES

The following paragraphs address your rights as a soldier and the procedures that must be followed in the administration of military justice.

RIGHTS OF SOLDIERS

You have many basic rights under military criminal law, including –

- The right to a defense lawyer.
- The right of due process of law.
- The right to remain silent.
- Rights under the law of search and seizure.

Defense Lawyer

The Army provides a fully qualified military defense lawyer free of charge to any soldier facing special or general court-martial. As your representative, the lawyer acts in your interest, advising and defending you to the best of his ability. Discussion about a case between you and your attorney is confidential under the attorney-client relationship. This means that the lawyer may not reveal what you have told him without your permission. If you are facing court-martial, you also have the right to have a civilian lawyer, but you must pay this cost or obtain the services without cost to the government. If you are not facing a special or general court-martial, you may still get advice from an Army lawyer on military criminal matters by contacting the local office of the staff judge advocate or Trial Defense Service office.

Due Process

Due Process of the law provides that, at trial, you have the right to confront and cross-examine all the witnesses against you. You also have the right to present evidence on your own behalf. You may not be found guilty of a crime until the government proves beyond a reasonable doubt that you committed the crime. A finding of guilty (*This is the end of page 15 and the start of page 16*) may be made only after a court has heard all the evidence relating to your guilt or innocence.

Remaining Silent

The UCMJ provides that if you are suspected of a crime, you may not be forced to speak against yourself. Before questioning, you must be advised of your right to remain silent. Also, if you are in custody, you must be told that you have the right to speak to a lawyer and have a lawyer present during questioning if you choose to answer questions.

Search and Seizure

The Fourth Amendment to the Constitution of the United States and the MCM govern examination of your person or property to discover and remove evidence. Military criminal law requires strict compliance with the Constitution and the MCM. Searches are permissible only under limited circumstances such as the following:

- **Search authorized by a commander.** A commander may order a search of you person or property when you are a member of his command. The decision to conduct a search, which may be reviewed by a court-martial, must be based upon probable cause.
- **Search incident to apprehension.** A person legally apprehending you may search you and your immediately available property. The property must be in your immediate control at the time of your apprehension.
- **Consent to search.** A search is lawful when made with your free and voluntary consent.
- **Search to prevent removal of criminal evidence.** If evidence of a crime is in danger of removal or destruction, and if time is not available to secure a commander's permission to search, a lawful search may be made.
- **Inspection for military readiness.** The commander has the authority to determine the military readiness of soldiers, organizations, and equipment. Evidence of a crime discovered during an authorized inspection may be seized and admitted as evidence at a court-martial.

PROCEDURES FOR COURT-MARTIAL

The Army's court-martial system includes

- **Summary court-martial (SCM).** This type of court-martial is composed of one commissioned officer who tries minor crimes. The maximum punishment depends upon your rank but may not exceed confinement for one month, forfeiture of two-thirds pay for one month, and reduction in rank. You may consult a lawyer concerning the case, but you are not entitled to have an appointed military lawyer present at the trial. You have the right to refuse trial by SCM.
- **Special court-martial (SPCM).** An SPCM consists of at least three court members. The defense counsel must be a lawyer. A military judge is normally appointed for the trial. The maximum sentence is confinement for six months, forfeiture of two-thirds pay per month for six months, and reduction in rank to the lowest enlisted grade. In some instances, the sentence may include a bad conduct discharge (BCD).
- **General court-martial (GCM).** A GCM tries the most serious offenses. It consists of at least five court members and a military judge. Both the prosecuting (trial) and defense counsel must be lawyers. A formal investigation must occur before the

trial. The GCM judge may sentence you to any punishment by law.

Just as in other American criminal courts, courts-martial are adversary proceedings. That is, the government and the accused each present matters that apply to their sides and must follow certain rules in doing so.

In either a general or a special court-martial with a military judge, you may choose to be tried by the military judge without the members. If the judge alone tries you, he decides if you are guilty or innocent. If the judge finds you guilty, he also determines your sentence. If members find you guilty, they determine your sentence.

You may plead guilty or not guilty. If you do not make a plea, the judge enters a plea of not guilty. Before trial, you may possibly agree to plead guilty in exchange for a promise by the convening authority to approve only a certain sentence. This is called a *pretrial agreement*. The person who ordered each trial reviews its result. Either the Judge Advocate General or the Army Court of Military Review may also review the court-martial conviction, depending on the type of court-martial and punishment imposed.

You may appeal certain convictions to the Court of Military Appeals, which consists of three civilian judges. The United States Supreme Court may review its decisions.

(This is the end of page 16).